

FCC MAIL SERVICE

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 30 12 11 PM '04

DOCKET FILE COPY ORIGINAL

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments,)	
FM Broadcast Stations.)	
(Americus, Georgia)	)	MB Docket No. 04-328
	)	RM-11046
)	
(Dulac, Louisiana)	)	MB Docket No. 04-329
	)	RM-11050
)	
(Palacios, Texas)	)	MB Docket No. 04-330
	)	RM-11051
)	
(Washington, Kansas)	)	MB Docket No. 04-331
	)	RM-11053
)	
(King City, California)	)	MB Docket No. 04-332
	)	RM-11054
)	
(Fallon Station, Nevada)	)	MB Docket No. <u>04-333</u>
	)	RM-11055
)	
(Coachella, California)	)	MB Docket No. 04-334
	)	RM-11056
)	
(Cambria, California)	)	MB Docket No. 04-335
	)	RM-11057
)	
(Carbon, Texas)	)	MB Docket No. 04-336
	)	RM-11058
)	
(Northport, Alabama)	)	MB Docket No. 04-337
	)	RM-11059

NOTICE OF PROPOSED RULEMAKING**Adopted: August 25, 2004****Released: August 27, 2004****Comment Date: October 18, 2004****Reply Comment Date: November 2, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it for consideration a multiple docket *Notice of Proposed Rule Making* setting forth ten separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.¹ The petitioner for each proposal has stated that it will apply for each requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rule making number and the Commission's Reference Information Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-328; RM-11046

Petitioner: SSR Communications, Inc.
5270 West Jones Bridge Road
Norcross, Georgia 30092-1628

Proposal: Allot Channel 295A at Americus, Georgia, as that community's sixth local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Americus, Georgia	234C3, 254C3	234C3, 254C3, 295A

Coordinates: 32-04-51 NL and 84-15-20 WL

Additional Information: The allotment requires a site restriction of 2.4 kilometers (1.5 miles) northwest of Americus, Georgia.

FCC Contact: R. Barthen Gorman (202) 418-2180

B. MB Docket No. 04-329; RM-11050

Petitioner: SSR Communications, Inc.
5270 West Jones Bridge Road
Norcross, Georgia 30092-1628

Proposal: Allot Channel 242A at Dulac, Louisiana, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Dulac, Louisiana	-----	242A

¹ 47 C.F.R. § 73.202(b).

Coordinates: 29-21-09 NL and 90-45-36 WL

Additional Information: The allotment requires a site restriction of 6.0 kilometers (3.7 miles) southwest of Dulac. Originally, petitioner requested that we allot Channel 230A at Dulac, which would have required the reclassification of Station WQUE-FM, New Orleans, Louisiana, from Channel 227C to Channel 227C0. The reclassification procedure for Station WQUE-FM would have to be completed before issuing a Notice of Proposed Rule Making. The staff found an equivalent Class A FM channel for Dulac, Channel 242A, which does not require reclassifying any Class C FM station. Channel 242A would provide the first local aural transmission service for Dulac. We remind petitioners to certify that there are no alternate FM channels available in situations where they ask for an allotment that would require an existing station to be reclassified from Class C to Class CO.

Petitioner states that Dulac is an incorporated community that is home to business, governmental, and civic organizations identifying themselves with Dulac. The 2000 U.S. Census lists Dulac as a Census Designated Place ("CDP") located in Terrebonne Parish, Louisiana, with a population of 2,458 persons. Although the designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.² Petitioner must explain whether the "Dulac" to which it refers is the "Dulac" listed as a CDP in the 2000 U.S. Census. Petitioner must also submit information demonstrating that Dulac is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of local government as well as social, economic, commercial, cultural, public service, or religious organizations that serve the community.³

FCC Contact: R. Barthen Gorman (202) 418-2180

C. MB Docket No. 04-330; RM-11051

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 264A at Palacios, Texas as that community's second local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Palacios, Texas	259A	259A, 264A

Coordinates: 28-36-26 NL and 96-10-00 WL

Additional Information: This allotment requires a site restriction of 12.2 kilometers (7.6 miles) southeast of Palacios. Since Palacios is located within 320 kilometers (199 miles) of the U.S.-Mexican border, we have requested concurrence from the Mexican government for this proposed allotment.

² See *Stock Island, Florida*, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, 7 FCC Rcd 3944 (M.M. Bur. 1992).

³ See *Hayfield, VA*, 12 FCC Rcd 16373 (M.M. Bur 1997) and *Kenansville, Florida*, 5 FCC Rcd 2663 (M.M. Bur 1990), *aff'd*, 10 FCC Rcd 9831(1995).

FCC Contact: R. Barthen Gorman (202) 418-2180

D. MB Docket No. 04-331; RM-11053

Petitioner: Andrew Shafer
3951 Regent Avenue
Cincinnati, Ohio 45212

Proposal: Allot Channel 271A at Washington, Kansas, as that community's first local aural transmission service.⁴

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Washington, Kansas	-----	271A

Coordinates: 39-49-05 NL and 97-03-02

Additional Information: This allotment is at the city's reference coordinates and therefore requires no site restriction.

FCC Contact: R. Barthen Gorman (202) 418-2180.

E. MB Docket No. 04-332; RM-11054

Petitioner: Daniel R. Feely
682 Palisade Street
Pasadena, California

Proposal: Allot Channel 275A at King City, California, as that community's fourth local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
King City, California	230B1, 271B	230B1, 271B, 275A

Coordinates: 36-12-40 NL and 121-07-40 WL

Additional Information: This allotment requires a site restriction of 0.3 kilometers (0.2 miles) southwest of King City.

FCC Contact: R. Barthen Gorman (202) 418-2180.

⁴ Washington is an incorporated city with a 2000 U.S. Census population of 1,223 persons, a post office and a zip code (66968). Petitioner asserts that Washington is the largest city in, and the county seat of, Washington County and that it has a mayor-council form of government. Petitioner also observes that Washington County Hospital, Washington Library, Washington Elementary (grades K-6), and Washington High School (grades 7-12) provide services to Washington.

F. MB Docket No. 04-333; RM-11055

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 287C at Fallon Station, Nevada, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Fallon Station, Nevada	-----	287C

Coordinates: 39-36-00 NL and 118-43-12 WL

Additional Information: This allotment requires a site restriction of 20.1 kilometers (12.5 miles) north of Fallon Station.

Fallon Station is listed in the 2000 U.S. Census as a Census Designated Place ("CDP") located in Churchill County, Nevada, with a population of 1,265 persons. Although the designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.⁵ Petitioner must submit additional information demonstrating that Fallon Station is a "community" for allotment purposes. Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Some examples of objective indications of community status include the existence of local government as well as social, economic, commercial, cultural, public service, or religious organizations that serve the community.⁶

FCC Contact: R.. Barthen Gorman, (202) 418-2180

G. MB Docket No. 04-334; RM-11056

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90406

Proposal: Allot Channel 278A at Coachella, California, as that community's third local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Coachella, California	229B	229B, 278A

Coordinates: 33-40-49 NL and 116-10-23 WL

Additional Information: This allotment is at the city's reference coordinates and requires no site restriction. Since Coachella is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

⁵ See cases cited in note 2, *supra*.

⁶ See cases cited in note 3, *supra*.

FCC Contact: R. Barthen Gorman, (202) 418-2180.

H. MB Docket No. 04-335; RM-11056

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, California 90405

Proposal: Allot Channel 293A at Cambria, California, as that community's third local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cambria, California	235B1, 278A	235B1, 278A, 293A

Coordinates: 35-36-36 NL and 121-06-00 WL

Additional Information: This allotment requires a site restriction of 5.4 kilometers (3.4 miles) north of Cambria.

FCC Contact: R. Barthen Gorman (202) 418-2180.

I. MB Docket No. 04-336; RM-11058

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 238A at Carbon, Texas, as that community's first local aural transmission service.⁷

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Carbon, Texas	-----	238A

Coordinates: 32-16-14 NL and 98-49-42 WL

Additional Information: This allotment is at the city's reference coordinates and therefore requires no site restriction.

FCC Contact: R. Barthen Gorman (202) 418-2180.

⁷ Carbon is an incorporated town with a 2000 U.S. Census population of 224 persons, a post office, and a zip code (76435). Petitioner asserts that Carbon has its own mayor, post office, volunteer fire department, city offices and several local churches.

J. MB Docket No. 04-337; RM-11059

Petitioner: TTL, Inc.
P. O. Box 70937
Tuscaloosa, Alabama 35407

Proposal: Allot Channel 286A at Northport, Alabama, as that community's second local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Northport, Alabama	264C3	264C3, 286A

Coordinates: 33-11-02 NL and 87-39-10 WL.

Additional Information: This allotment requires a site restriction of 8.6 kilometers (5.4 miles) southwest of Northport.

FCC Contact: R. Barthen Gorman (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket *Notice of Proposed Rule Making* should reference *only* the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before October 18, 2004, and reply comments on or before November 2, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as listed above for each docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. Section 3506(c)(4).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff

⁸ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*, 47 C.F.R. Sections 73.202(b), 73.504 and 73.606(b). 46 FR 11549 (February 9, 1981).

for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

7. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See 47 C.F.R. Section 1.420(d).)

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in 47 C. F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.